



ATIBA SOFTWARE, LLC
DIRECT PLACEMENT TERMS AND CONDITIONS

These TERMS AND CONDITIONS (the “Terms and Conditions”) is entered into by and between Atiba Software, LLC (“Atiba”) and the Customer identified (“Customer”) in the Services Agreement.

The entire agreement between the parties shall consist of these Terms and Conditions, the Services Agreement, any exhibits attached thereto and any additional or future statements of work which may be executed by the parties.

1. Definitions.

1.1. “Services” shall mean any services performed by Atiba as specified in the Services Agreement signed by the Parties.

1.2. “Work Product” shall mean all tangible and intangible results and items arising out of the Services delivered to Customer by Atiba under these Terms and Conditions, together with all derivative works and all related intellectual property rights.

2. Services.

2.1. Performance.

Atiba shall use commercially reasonable efforts to perform the Services in accordance with the Statement of Work which is part and parcel of the Services Agreement executed by both parties (each a “Statement of Work”). The parties may execute additional or future Statements of Work which may become part and parcel of the original Services Agreement if agreed to by the parties. Customer acknowledges that Atiba's performance is dependent in large part upon Customer's reasonable assistance and performance of its prerequisite obligations set forth in the Statement of Work. Accordingly, any dates or time periods relevant to Atiba's performance will be equitably extended automatically to account for any delays due to failure of Customer to complete any of its prerequisite obligations or to provide such assistance, or due to changes requested by Customer.

2.2. Changes.

Changes to any Statement of Work or the Services to be performed thereunder shall become effective only when the parties execute a written change order. Such executed written change order shall be deemed to become incorporated into the original Service Agreement between the parties. The Customer agrees that, for the sake of convenience, Atiba has the right to obtain electronic mail consent to any change orders. The Customer's affirmative response to such electronic mail shall constitute



written consent to the requested change order.

2.3. Additional Statements of Work.

If Customer desires to engage Atiba for additional services that are not included in the initial Statement of Work, the parties shall in good faith negotiate additional Statements of Work, subject to the availability of Atiba personnel and resources. Upon execution by both parties, each additional Statement of Work shall be deemed a part of the original Services Agreement. Atiba shall only be obligated to provide Services that are set forth in an executed Statement of Work. Accommodations may be made by Atiba to assist the Customer with certain projects or tasks, however these are only to be considered accommodations for convenience purposes and do not create an obligation to perform any such services unless the Services are set forth in an executed Statement of Work.

2.4. Nature of Relationship.

Atiba's relationship with Customer will be that of an independent contractor providing consulting services. Nothing in these Terms and Conditions shall be construed to create a partnership, joint venture, principal-agent or employer-employee relationship.

3. Fees and Payments.

3.1. Fees.

Customer agrees to pay Atiba all fees for Services performed under the applicable Statement of Work (the "Fees"). Atiba's current fee structure shall be set forth in the Services Agreement. Customer agrees that Atiba shall have the right to increase their Fees on January 1 of each year, provided such increases do not exceed the greater of 5% or the corresponding percentage increase in US CPI. The Customer recognizes that the increase in fees will adjust the fee structure in the Statement of Work as the estimated amount of work will remain the same but the rate for such work will increase. Customer agrees that such increases are acceptable.

3.2. Payment Terms.

Payment shall be made by Customer within 30 days after date of the invoice, which will be submitted to Customer on the candidate acceptance date, provided, however, that if Customer disputes any part of an invoice, Customer must notify Atiba in writing within 15 days of the date of the invoice and shall pay the undisputed amount. To constitute notification hereunder, Customer must include the Invoice number, Invoice date, the specific amount that is disputed and a summary of the basis for such dispute to invoicequestion@atiba.com. Customer's failure to dispute an invoice or any part of an invoice in writing within 15 days of date of the invoice will be conclusive proof that the invoice is accepted. Customer agrees that they waive their rights, if any future legal dispute should arise, to challenge invoices which were not disputed in accordance with the process detailed herein. Any late



payment shall be subject to any costs of collection (including reasonable legal fees) and shall bear interest at the rate of 1.5% per month until paid. Customer further agrees that they waive their rights, if any future legal dispute should arise, to challenge the quality, scope or nature of the work discussed in any Status Report which was not disputed in accordance with the process detailed herein.

3.4. Taxes.

All fees are exclusive of, and Customer is responsible for, all applicable federal, state, or local sales, use, excise, export or other applicable taxes, except for taxes on the net income of Atiba. Atiba may add any such taxes to the applicable invoice. Customer agrees that it shall be their responsibility to seek a refund of any sales or use taxes collected by Atiba which Customer believes to be in excess of what is owed. Customer agrees that they are not permitted to refuse to pay taxes included in any invoice for work performed.

4. Term and Termination.

4.1. Term.

The term of the Agreement shall commence on the Effective Date and shall remain in effect until completion of each Statement of Work issued hereunder, unless terminated earlier as provided herein.

4.2. Termination for Default.

4.2.1 Events of Default.

The following events shall constitute “*Events of Default*,” and the occurrence of any one (1) or more of such Events of Default shall constitute a material breach of these Terms and Conditions and/or the applicable Statement of Work that shall afford a party, as applicable, the rights and remedies set forth in this Article:

(a) In the case of Atiba, Atiba's failure to achieve the applicable Statement of Work, provided that such failure is not due to: (i) the occurrence of a Force Majeure Event; (ii) a delay by Customer; or (iii) Customer's failure, for any reason other than an Atiba-caused delay, to perform or provide, as applicable, any interdependent material, provided that such failure previously was identified by Atiba in writing;

(b) In the case of Atiba, Atiba's material breach of any representation set forth in these Terms and Conditions or in any Statement of Work, provided that: (i) in the case of the representations and warranties, Atiba has failed to provide to Customer an acceptable written plan to cure such breach within a reasonable time frame, following receipt of written notice of such breach; or (ii) in the case of any other representation set forth in these Terms and Conditions, if any, such breach is not cured within thirty (30) calendar days, or



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if the breach reasonably cannot be cured within thirty (30) calendar days, Atiba has failed to provide to Customer an acceptable written plan to cure such breach within such thirty (30) calendar day period, in each case following receipt of written notice of such breach;

(c) In the case of either party, such party's failure to perform any other material obligation under these Terms and Conditions or any Statement of Work that is not cured within thirty (30) calendar days following receipt of written notice of such failure;

(d) In the case of Atiba or Customer, the institution of bankruptcy, receivership, insolvency, reorganization or other similar proceedings by or against Atiba or Customer under any section or chapter of the United States Bankruptcy Code, as amended, or under any similar laws or statutes of the United States (or any state thereof), if such proceedings have not been dismissed or discharged within sixty (60) calendar days after they are instituted; the insolvency or making of an assignment for the benefit of creditors or the admittance by Atiba or Customer of any involuntary debts as they mature; the institution of any reorganization arrangement or other readjustment of debt plan of Atiba or Customer not involving the United States Bankruptcy Code; or

(e) In the case of Atiba or Customer, Atiba or Customer makes an assignment of all or substantially all of its assets for the benefit of creditors, or Atiba or Customer's management or board of directors takes any corporate action by in furtherance of the above action.

4.2.2. Rights and Remedies of Atiba Upon Default of Customer.

Upon the occurrence of an Event of Default by or with respect to Customer, Atiba shall be entitled to:

(a) Subject to Customer's rights as set forth below, full and final payment of all outstanding invoices as of the date of the uncured material breach and Atiba is further entitled to fully or partially terminate these Terms and Conditions and/or the affected Statement of Work; and/or

(b) If the Event of Default is based on Customer's uncured material breach of Section 3, Atiba shall be entitled to terminate Customer's license rights, if any, herein; and/or

(c) Any other additional remedies that may be set forth in a Statement of Work.

4.2.3. Rights and Remedies of Customer Upon Default of Atiba.

Upon the occurrence of an Event of Default by or with respect to Atiba, Customer shall be entitled to:



(a) fully or partially terminate these Terms and Conditions and/or the affected Statement of Works; and/or

(b) obtain a refund of any pre-paid but unearned fees (Customer shall not be entitled to a refund of any previously paid and earned fees. Earned fees shall be determined based upon the agreed upon hourly rate then in effect and the total number of hours expended by Atiba prior to the date of notice from Customer of the full or partial termination of these Terms and Conditions and/or the affected Statement of Work); and/or

(e) any other additional remedies that may be set forth in a Statement of Work.

4.3. Effect of Termination.

In the event of termination of these Terms and Conditions, any amounts owed to Atiba under these Terms and Conditions before such termination will be immediately due and payable. Sections 1, 3, 5, 6, 7.2, and 8 through 10 shall survive termination of these Terms and Conditions.

5. Personnel.

Customer agrees that during the course of these Terms and Conditions and for a period of two (2) years thereafter, Customer will not, directly or indirectly: (a) interfere with, disrupt or attempt to disrupt the employment relationship, contracted or otherwise, between Atiba and any of its employees; or (b) Solicit, hire, contract with, consult, joint venture, partner (in any corporate, partnership or limited liability structure) entice or induce any person who is or at any time after the Effective Date hereof an employee or contractor of Atiba, whether such employee or contractor worked on Customer's project or not. This prohibition extends to any company, firm or entity that the former employee or contractor may hold an ownership interest in.

Customer acknowledges that damages alone would not be an adequate remedy for the breach of this prohibition. Accordingly, without prejudice to any other rights and remedies it may have, the Atiba shall be entitled to the granting of equitable relief (including without limitation injunctive relief) concerning any breach of any of this provision.

In furtherance of Atiba's rights, Customer agrees that if it breaches this prohibition as detailed herein, the Customer agrees to pay Atiba liquidated damages in an amount equal to twelve (12) months of the employee's or independent contractor's total gross compensation. These damages shall be calculated in a trailing twelve (12) months fashion from the date that the employee or independent contractor ceased their relationship with Atiba as a result of Customer's violation of this Section.

Customer further agrees that if Atiba is required to commence any legal action with regard to enforcement of its equitable rights or liquidated damages rights, as detailed herein, that Atiba shall be



entitled to recover all costs associated therewith in additional damages, including, but not limited to all attorney fees.

6. Confidential Information.

6.1. Protection of Confidential Information.

Each party (“Receiving Party”) agrees to keep confidential and not disclose or use except in performance of its obligations under these Terms and Conditions, information related to the other party's (“Disclosing Party”) technology, finances or business that the Receiving Party learns or obtains in connection with these Terms and Conditions (“Confidential Information”). Neither party shall disclose the terms of these Terms and Conditions to any third party without the prior written consent of the other party, except as required by law or in connection with a merger or financing transaction. Disclosure of the terms of these Terms and Conditions, including, but not limited to, the Scope of Work or Services Agreement, may constitute, at the election of Atiba, a default under Section 5.2 of the Terms and Conditions. Each party shall use reasonable precautions to protect the other's Confidential Information and employ at least those precautions that such party employs to protect its own confidential or proprietary information.

6.2. Exceptions.

Confidential Information shall not include information the Receiving Party can document (a) is in or enters (through no improper action or inaction by the Receiving Party or any affiliate, agent or employee) the public domain, or (b) was rightfully in its possession or known by it prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it by another person without restriction, or (d) was independently developed by it by persons without access to such information and without use of any Confidential Information of the Disclosing Party.

6.3. Required Disclosures.

Each party, with prior written notice to the Disclosing Party, may disclose such Confidential Information to the minimum extent it is required to be disclosed pursuant to the lawful requirement or request of a governmental entity or agency (including a court order or subpoena), provided that reasonable measures are taken to seek appropriate confidential treatment or a protective order, or to assist the other party to do so.

6.4. Covenant of Non-Disparagement; Injunctive Relief.

The parties agree that each will not make, at any time or place, any disparaging remarks, verbally or in writing, concerning any of the other party's actions or perceived omissions, regarding any matter connected with these Terms and Conditions or otherwise take any action that would disparage or cast doubt upon the business acumen or judgment of the other party. Each party understands and



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acknowledges that the other party's business and reputation are of special, unique, and extraordinary character, which gives them a particular value, the loss of which cannot reasonably be compensated in damages in an action at law. Accordingly, each party further agrees that in addition to any other rights or remedies that any other party may possess at law, any aggrieved party will be entitled to injunctive and other equitable relief in order to prevent or remedy a breach of the provisions of this Section by the other party.

7. Representations and Warranties.

7.1. Atiba hereby represents to Customer that the Services shall be performed in a professional and workmanlike manner consistent with industry practices.

7.2. Disclaimer.

EXCEPT AS EXPRESSLY PROVIDED IN SECTION 8.1, THE SERVICES AND WORK PRODUCT ARE PROVIDED "AS IS" WITHOUT ANY WARRANTY, AND CUSTOMER'S USE OF THE FOREGOING IS SOLELY AT CUSTOMER'S OWN RISK. Atiba does not warrant that the Services or Work Product will meet Customer's requirements or that the Services or Work Product will be error-free. To the fullest extent permissible under applicable law, Atiba disclaims all representations and warranties, express and implied, concerning or related to these Terms and Conditions, including, but not limited to, any warranties of merchantability, fitness for a particular purpose.

8. Limitations of Liability; Disclaimers; Indemnity.

8.1. IN NO EVENT SHALL ATIBA BE LIABLE FOR ANY FORM OF DIRECT, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL, INCLUDING BUT NOT LIMITED TO PUNITIVE DAMAGES FOR LOSS OF PROFITS, REVENUE, DATA OR DATA USE, INCURRED BY YOU OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT OR TORT (WHETHER UNDER A THEORY OF NEGLIGENCE, STRICT LIABILITY OR OTHERWISE), ARISING FROM ANY AND ALL SERVICES PROVIDED BY ATIBA TO CUSTOMER, WHETHER OR NOT THE CUSTOMER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. IN NO EVENT SHALL ATIBA EVER BE LIABLE TO CUSTOMER IN AN AMOUNT THAT EXCEEDS THE ACTUAL FEES PAID BY CUSTOMER TO ATIBA FOR THE SERVICES OR WORK PRODUCT GIVING RISE TO THE CLAIM UNDER THE APPLICABLE STATEMENT OF WORK OR THE LAST INVOICE AMOUNT, WHICHEVER IS LESS.

8.2. Each party to these Terms and Conditions waives the right to a jury trial with respect to any claims related to or arising out of these Terms and Conditions.

8.3. Customer shall indemnify Atiba from and against any and all costs (including reasonable legal



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fees), expenses, claims, damages, losses, actions and judgements which any or all of them suffer as a direct result of any third party claim related to any Service or product developed by Atiba under the Agreement by Atiba or its subcontractor, or any portion thereof, including, but not limited to claims that such service or product developed infringes upon the intellectual property rights of any third party.

8.4. Indemnification under this clause is contingent on Customer being notified promptly of such action, claim, suit or proceeding in writing and being given authority, control and full and proper information and assistance (at Customer's cost) in the defense and settlement of such action, claim, suit or proceeding.

8.5. If Customer's products, custom software, or other software, content, data or other materials provided by or on behalf of Customer under this Agreement become, or in Customer's reasonable good faith opinion are likely to become the subject of such a claim of infringement, Customer may at its option and expense: (1) within a commercially reasonable period of time secure for Atiba the right to continue using the allegedly infringing items; (2) within a commercially reasonable period of time replace or modify the allegedly infringing items to make them non-infringing; (3) litigate with the alleged infringer, and/or (4) terminate this Agreement with respect to such infringing item only, without prejudice to any rights Atiba may have under.

8.6. Atiba has no obligation to Customer under this indemnity in connection with any claim or allegation to the extent resulting directly from: (i) the negligent use of the product developed hereunder by Atiba or its subcontractor, other software developed by Atiba or its subcontractor hereunder, content or data provided by or on behalf of Atiba hereunder; or (ii) the use of the product developed by Atiba or its subcontractor, other software developed by Atiba or its subcontractor hereunder, content, or data provided hereunder by or on behalf of Atiba other than in accordance with this Agreement and the documentation, manuals or other written instructions or specifications provided by or on behalf of Atiba; or (iii) modifications or alterations to any of the Custom Software developed by Atiba or its subcontractor, other software developed by Atiba or its subcontractor hereunder, content or data provided by or on behalf of Atiba which are made other than by Atiba or its subcontractors; or (iv) Customer's or Customer's failure to use corrections or enhancements made available by or on behalf of Atiba; or (v) Customer's or Customer's use of the product developed by or on behalf of Atiba, content or data provided by or on behalf of Atiba in combination with any product or information not owned or developed or provided by Atiba or any third party (other than Customer) on behalf of Atiba; or (vi) Customer's or Customer's distribution, marketing or use for the benefit of third parties (other than by using in the normal course marketing material(s) provided by or on behalf of Atiba and/or otherwise as specifically allowed under this Agreement) of the product developed hereunder by Atiba or its subcontractor, other software developed by Atiba or its subcontractor hereunder, content or data provided hereunder by on or behalf of Atiba; or (vii) information, data, hardware, software or other materials provided hereunder by Customer, Customer Group or Customer's Customer or any third party on behalf of Customer or Customer's Customer; or (viii) software developed by Customer or a third party on behalf of Customer hereunder.



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9. Force Majeure.

Atiba shall not be liable to Customer or any other person for any delay or failure in the performance of these Terms and Conditions or for loss or damage of any nature whatsoever suffered by such party due to disruption or unavailability of communication facilities, utility or Internet service provider failure, acts of war, acts of vandalism, lightning, fire, strike, natural disaster or any other causes beyond Atiba's reasonable control.

10. Other Important Terms.

10.1. Entire Agreement.

These Terms and Conditions, together with the Services Agreement and any Exhibits thereto and any Statements of Work executed in accordance therewith, constitutes the entire agreement of the parties, and supersedes any and all previous agreements with respect to the subject matter hereof, whether oral or written. Customer agrees that it shall not rely upon matters discussed in contemplation of the engagement of Atiba to provide the expected work. It is the responsibility of the Customer to confirm that the Services Agreement and any Exhibits thereto and any Statements of Work fairly and accurately reflects the services expected to be performed by Atiba for the Customer's benefit. The execution of the Services Agreement signifies the Customer's acknowledgement that the Scope of Work and all Terms and Conditions are to their liking and that they expect the same to be fully enforced.

From time to time Atiba will update these Terms and Services. Atiba shall notify the Customer at the most recent email address on file with Atiba of such update. Such notice shall reasonably inform Customer as to where they can locate the new Terms and Conditions. Customer shall have seven (7) days to notify Atiba whether they object to being bound by the new Terms and Conditions. If they fail to notify Atiba within those seven (7) days then they shall have been deemed to have agreed to the new Terms and Conditions. If they object within those seven (7) days then they shall remain bound by the Terms and Conditions that existed at the time of the execution of their original Services Agreement with Atiba.

10.2. Severability; Waiver.

The invalidity or unenforceability of any provision of these Terms and Conditions shall not affect any other provision of these Terms and Conditions, and the remaining provisions shall continue with the same effect as if such unenforceable or invalid provision had not been included in these Terms and Conditions. Except as otherwise expressly provided herein, any provision of these Terms and Conditions may be amended and the observance of any provision of these Terms and Conditions may be waived (either generally or any particular instance and either retroactively or prospectively) only with the written consent of the party against whom such modification or waiver will be enforced.

10.3. Binding Nature; Assignment.



These Terms and Conditions shall be binding and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. These Terms and Conditions may not be assigned by Customer without Atiba's prior written consent, such consent not to be unreasonably withheld. Atiba may assign, delegate and/or subcontract any or all of its rights or obligations hereunder.

10.4. Notices.

All notices and consents required or permitted to be given under these Terms and Conditions shall be in writing to the parties at the addresses designated herein or to such other address as either party may designate to the other by written notice, and shall be effective upon receipt. Written notice shall be made by personal delivery or sent by nationally recognized overnight commercial courier service to the other party.

10.5. Governing Law.

These Terms and Conditions shall be governed by and construed under the laws of the State of Tennessee and the United States without regard to conflicts of laws provisions thereof. Unless waived by Atiba in writing for the particular instance, the exclusive venue for actions related to the subject matter hereof shall be in the Tennessee state and federal courts having within their jurisdiction the location of Atiba's principal place of business, and both parties consent to the jurisdiction of such courts. In any action or proceeding to enforce rights under these Terms and Conditions, if Atiba is successful it shall be entitled to recover all costs and attorney's fees incurred therein.

10.6. Counterparts.

These Terms and Conditions may be executed in two counterparts, each of which shall be deemed to be an original, and both of which together shall constitute one contract.

10.7. Dispute Resolution.

Dispute Resolution. It is the objective of the parties to establish procedures to facilitate the informal and inexpensive resolution of any and all disputes by mutual cooperation and without resort to litigation. To accomplish this objective, the parties agree to follow the procedures set forth below if a dispute arises:

- a) If a dispute arises from or relates to this contract or the breach thereof, and if the dispute cannot be settled through direct discussions, the parties agree to endeavor first to settle the dispute by and through mediation. The parties agree that they are not permitted to submit the dispute to arbitration or to file a civil action without completing mediation. Any unresolved controversy or claim arising from or relating to this contract or breach thereof shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial



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Arbitration Rules, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. If all parties to the dispute agree, a mediator involved in the parties' mediation may be asked to serve as the arbitrator

- b) Within 14 days after the commencement of arbitration, each party shall select one person to act as arbitrator and the two selected shall select a third arbitrator within 10 days of their appointment. If the arbitrators selected by the parties are unable or fail to agree upon the third arbitrator, the third arbitrator shall be selected by the American Arbitration Association. The arbitrators will be selected from a panel of persons having experience with and knowledge of electronic computers and the computer business, and at least one of the arbitrators selected will be an attorney.
- c) The place of arbitration shall be Nashville, Tennessee.
- d) This agreement shall be governed by and interpreted in accordance with the laws of the State of Tennessee.
- e) Either party may apply to the arbitrator seeking injunctive relief until the arbitration award is rendered or the controversy is otherwise resolved. Either party also may, without waiving any remedy under this agreement, seek from any court having jurisdiction any interim or provisional relief that is necessary to protect the rights or property of that party, pending the establishment of the arbitral tribunal (or pending the arbitral tribunal's determination of the merits of the controversy).
- f) The arbitrators will have no authority to award punitive, consequential or other damages not measured by the prevailing party's actual damages. The arbitrators shall award to the prevailing party, if any, as determined by the arbitrators, all of its costs and fees. "Costs and fees" mean all reasonable pre-award expenses of the arbitration, including the arbitrators' fees, administrative fees, travel expenses, out-of-pocket expenses such as copying and telephone, court costs, witness fees, and attorneys' fees.
- g) Except as may be required by law, neither a party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties.

The requirements of filing a notice of claim with respect to the dispute submitted to mediation shall be suspended until the conclusion of the mediation or arbitration process, as the case may be.